

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of)

TELIGENT SERVICES, INC. and )  
TAC LICENSE CORP. )

DOCKET NO. 01-0392

For Grant of the Authority )  
Necessary to Consummate a )  
Chapter 11 "Re-Emergence" Plan. )

DECISION AND ORDER NO. 19100

Filed December 10, 2001

At 2:00 o'clock P.M.

For Don M. Yamaguchi  
Chief Clerk of the Commission

ATTEST: A True Copy  
CATHERINE SAKATO  
Clerk  
Public Utilities Commission  
State of Hawaii

C. Sakato

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<sup>2</sup>Since the petition is silent regarding the statutory authority that Petitioners are making their request, we will deem that Petitioners are making their request pursuant to the applicable laws and rules governing telecommunications services in the State of Hawaii (State).

filed on November 8, 2001, the Consumer Advocate informed the commission that it does not object to the approval of the petition in this docket.

## II.

### A.

Old TSI is a Delaware corporation with principal business offices in Vienna, Virginia. Old TSI and its affiliates provide a wide range of facilities-based local, long distance, and broadband data services and resold long distance services through its network of fixed wireless and leased wire-line facilities in select markets in the United States. In Hawaii, Old TSI was granted a certificate of authority (COA) to provide telecommunications services.<sup>3</sup>

New TSI is a recently formed Delaware corporation with principal business offices in Herndon, Virginia. New TSI is a wholly owned subsidiary of Teligent Acquisition Corp. (New Teligent). New Teligent is also a recently formed Delaware corporation.

### B.

New Teligent and New TSI were formed under a reorganization plan to permit Old Teligent's core facilities-based telecommunications operations to emerge from bankruptcy and

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<sup>3</sup>By Decision and Order No. 17577, filed on March 2, 2000, as amended by Order No. 17840, filed on July 18, 2000, in Docket No. 99-0173, the commission granted Old TSI a COA to operate as a facilities-based provider and reseller of intrastate telecommunications services within the State.

continue as an on-going business. In this effort, New Teligent proposes to acquire the core operations, operating assets, and associated authorities of Old Teligent, including those associated with the provision of telecommunications services in Hawaii (proposed transaction). Through the proposed transaction, New Teligent will acquire most of the communications assets associated with Old TSI's domestic facilities-based fixed wireless and leased wire-line operations, including the associated telecommunications equipment, existing customer base, and federal and state licenses and/or certificates authorizing those operations. Pursuant to this objective and to obtain the Bankruptcy Court's approval, New Teligent has entered into an Asset Purchase Agreement (Agreement) with Old Teligent and certain of its subsidiaries, including Old TSI.

Under the Agreement, New Teligent will acquire substantially all of Old Teligent's facilities-based telecommunications assets and the operations and existing customer base associated with them. In an effort to avoid customer confusion and for convenience, upon closing of the transaction, New TSI plans to change its name to and operate under the name "Teligent Services, Inc." Under this name, New TSI will continue to operate the same services pursuant to the same rates, terms, and conditions of service as currently provided by Old TSI. Petitioners state that New TSI will adopt, with no modifications, all the tariffs that Old TSI currently has on file with the commission. Thus, Petitioners also state that the transaction described in the instant docket will be

transparent to its Hawaii customers. Among other things, Petitioners represent that New TSI will have both the managerial and technical resources necessary to operate Old TSI's operations. Furthermore, Petitioners contend that the transaction described in the instant petition is in the public interest since it will: (1) "increase competition in the Hawaii telecommunications market by reintroducing "Teligent" as a viable competitor in its selected markets using a more refined, focused, and viable business strategy and (2) . . . minimize the disruption of service and be virtually transparent to remaining Teligent customers."<sup>4</sup>

C.

The Consumer Advocate states that New TSI appears to be financially fit and to possess the managerial and technical requirements to provide telecommunications services in the State. It also indicates that the proposed acquisition of Old Teligent's core operations, operating assets, and associated authorizations appear to be in the best interest of Petitioner's customers. Furthermore, the Consumer Advocate conveys its belief that the proposed rates, terms, and conditions of telecommunication services, provided through New TSI's plan to adopt Old TSI's existing tariff, are reasonable.

Thus, based on the above, among other things, the Consumer Advocate informed the commission that it does not object to the approval of the petition in this docket.

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<sup>4</sup>See Petition, at 8.

### III.

#### A.

Hawaii Revised Statutes (HRS) § 269-19 requires a public utility to obtain commission approval prior to, among other things, selling, leasing, assigning, mortgaging, or otherwise disposing of or encumbering the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public. The proposed transaction described in the instant docket falls under the purview of HRS § 269-19.

Upon review, the commission finds that the proposed transaction to consummate Petitioner's Chapter 11 re-emergence plan to be reasonable and consistent with the public interest. Old TSI provides competitive telecommunications services and is not a dominant provider of telecommunications services in the State. Through the adoption of Old TSI's existing tariff by New TSI, among other things, the proposed transaction described in the instant docket should be transparent to Hawaii customers. Based on the above, among other things, we find that the impact of the proposed transaction described in the instant petition on Hawaii customers should be minimal, if any. Additionally, approval of the petition in the instant docket should benefit Old TSI's existing Hawaii customers.

Thus, the commission concludes that the proposed transaction, described in the petition in this docket, should be approved.

B.

Under Hawaii Administrative Rules (HAR) §§ 6-80-17 and 6-80-18, an entity other than the incumbent local exchange carrier offering to provide intrastate telecommunications services must obtain a commission issued COA prior to offering such services. Petitioners state their intent to have New TSI provide intrastate telecommunications services in the State through the adoption of Old TSI's existing tariff. Thus, New TSI must satisfy the requirements of HAR Chapter 6-80, specifically the requirements of HAR § 6-80-18.

Upon review of the full record, the commission finds that New TSI has met the requirements of HAR § 6-80-18. Thus, the commission concludes that New TSI should be granted a COA to operate as a facilities-based provider and a reseller of intrastate telecommunications services within the State. Furthermore, prior to or shortly upon completion of the transaction described in this petition, the commission concludes that Old Teligent and Old TSI should: (1) surrender their respective COAs; and (2) pursuant to HRS § 269-30, pay or cause to be paid all unpaid public utility fees for the years 2000 and 2001.

C.

Under HAR § 6-80-129(14) a telecommunications carrier is prohibited from substituting its service for a similar service provided by a carrier of the customer's choice without the customer's written consent. Petitioners request that we grant

them the necessary approvals to consummate their plan to re-emerge from their Chapter 11 status. Thus, in an effort to meet Petitioners' needs and recognizing that time is a factor, we find that waiver of the provisions of HAR § 6-80-129(14) will serve the same interest as public interest regulation, especially in light of our finding that the proposed transaction in this docket is reasonable and consistent with the public interest. We note that under HRS § 269-16.9, the commission, upon a determination that competition will serve the same purpose as public interest regulation, is allowed to waive regulatory requirements applicable to telecommunications carriers. Likewise, under HAR 6-80-135, the commission is permitted to exempt or waive the applicability of any of the provisions of HRS Chapter 269 or any rule upon a determination that the exemption or waiver is in the public interest.<sup>5</sup>

Thus, we conclude that the applicability of HAR § 6-80-129(14), as it relates to the matters in this docket, should be waived.

#### IV.

##### THE COMMISSION ORDERS:

1. The proposed transaction, to consummate the re-emergence plan, as described in Petitioners' joint Petition filed on September 12, 2001, is approved.

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<sup>5</sup>However, the commission may not exempt or waive a telecommunications carrier from the provisions of HRS § 269-34 and any provisions of HAR Chapter 6-80 that implement that statutory provision.



2. New TSI is granted a COA to operate as a provider of facilities-based and resold intrastate telecommunications services in the State. As a holder of a COA, New TSI is subject to all applicable provisions of HRS Chapter 269, HAR Chapters 6-80 and 6-81, any other applicable State laws and commission rules, and any orders that the commission may issue from time to time.

3. New TSI shall file its tariff with the commission (adopting Old TSI's currently filed tariff) in accordance with HAR §§ 6-80-39 and 6-80-40. New TSI shall ensure that the appropriate effective date and entity providing the service is reflected on the tariff. An original and eight copies of the tariff shall be filed with the commission, and two copies shall be served on the Consumer Advocate. In the event of a conflict between any provisions of New TSI's tariff and State law, State law shall prevail.

4. Within 30 days of the date of this decision and order, New TSI shall pay a public utility fee of \$60, pursuant to HRS § 269-30. Checks regarding this matter and ordering paragraph five, below, shall be made payable to the Hawaii Public Utilities Commission, and sent to the commission's office at 465 South King Street, Suite No. 103, Honolulu, HI, 96813.

5. Prior to or shortly upon completion of the proposed transaction, Old Teligent and Old TSI must:

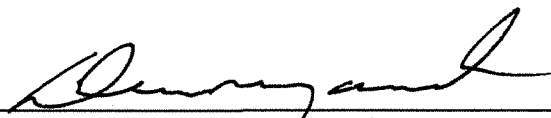
- (a) Surrender their respective COAs; and
- (b) Pursuant to HRS § 269-30, pay or cause to be paid all unpaid public utility

fees, as applicable, for the years 2000 and 2001.

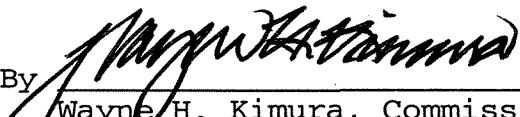
6. The applicability of the requirements of HAR § 6-80-129(14), as it relates to the matters in this docket, is waived.

DONE at Honolulu, Hawaii the 10th day of December, 2001.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Dennis R. Yamada, Chairman

By (EXCUSED)  
Gregory G. Y. Pai, Commissioner

By   
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:

  
Ji Sook Kim  
Commission Counsel

01-0392.eh

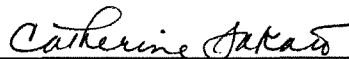
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 19100 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
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Honolulu, HI 96809

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Catherine Sakato

DATED: December 10, 2001